SUPREME COURT OF THE UNITED STATES.

No. 325.

CHARLES BLUEJACKET, FOR HIMSELF AND OTHER MEMBERS OF THE UNITED TRIBE OF SHAWNEE INDIANS RESIDING IN KANSAS, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF JOHNSON, STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

INDEX.

	Original.	Print.
Petition in error	1	1
Petition (original)	5	2
Bond	15	6
Summons	17	7
Alias summons	19	8
Demurrer	21	9
Answer	24	10
Amended answer	29	12
Replication to answer	30	13
Decree of district court	32	14
Judgment	70	29
Writ of error	72	29
Bond for costs	76	31
Citation	79	32

1 Pleas before the honorable supreme court of the State of Kansas, at a term of said court, held at the city of Topeka, in said State, commencing on the 18th day of July, A. D. 1865, when were present Hon. Robert Crozier, chief justice, Hon. L. D. Bailey and Hon. Jacob Safford, associate justices, and Andrew Stark, clerk.

Be it remembered, that on the 18th day of July, A. D. 1865, there was filed in the office of the clerk of the supreme court of Kansas a petition in error and transcript from the record of the district court of Johnson county, Kansas, together with a waiver of service and issue of summons, and appearance of defendants in error, which are in the words and figures following, to wit:

Petition in error.

State of Kansas, supreme court.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas, plaintiffs in error,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the
2 State of Kansas, and J. W. Sponable, treasurer of said county, defendants in error.

The said Charles Bluejucket, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, in the State of Kansas, complain of the said board of commissioners of Johnson county, in the State of Kansas, and J. W. Sponable, treasurer of said county, defendants, for that said defendants at the special June term of the district court for the fourth judicial district, sitting within and for Johnson county, Kansas, in the year A. D. 1865, recovered a judgment and decree by the consideration of said court against the said plaintiffs in a certain action then and there pending in said court, wherein the above named plaintiffs were plaintiffs and the above named defendants were defendants, a copy of the record of the judgment and proceedings in which case duly certified is hereto attached, marked A, and made a part of this petition.

And the above named plaintiffs aver that there is error in the record and proceedings in this, to wit:

1st. That the court erred in overruling the motion of the said plaintiffs for a new trial, and in permitting the judgment and decree of the said court to stand.

2d. That the said court erred in refusing the said plaintiff
3 a new trial in said case.

3d. That the said judgment was for the said defendant,

when it should have been for the plaintiffs according to the law and the evidence in the case.

4. The said plaintiff therefore prays that the said judgment and decree be reversed, and the said plaintiffs restored to all things they have lost by reason thereof.

WILSON SHANNON,
Att'y for Pl'ffs.

I agree to appear for the above named defendants, and waive the issuing and service of process.

Given under my hand this 15th day of July, A. D. 1865.

S. O. THACHER,
Att'y for Def'ts in Error.

4 STATE OF KANSAS, *County of Johnson, ss:*

Pleas before the Hon. Solon O. Thacher, judge of the dist. court for the 4th judicial dist. of the State of Kansas, sitting within and for Johnson county, at a dist. court begun and held at the court-house in the town of Olatha, in said county and State, on and from the 14th day of Sept., A. D. 1863.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the co. of Johnson, State of Kansas,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Spoonable, treasurer of said county.

Be it remembered, that heretofore, to wit, on the 9th day of May, A. D. 1863, one Charles Bluejacket, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the co. of Johnson, State of Kansas, filed in the clerk's office of said court his certain petition against the board of county commis-

5 sioners of the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, which said petition is in words and figures following, to wit:

Petition.

State of Kansas, Johnson county, dist. court.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county.

Your petitioners, Charles Bluejacket, who sues as well for himself

as all other members of the United tribe of Shawnee Indians residing in the said county of Johnson, represents that he is now and always has been a member of the United tribe of Shawnee Indians, and resides in the said county of Johnson, and has so resided before and since the organization of the territorial government of Kansas; that a large number of said United tribe of Indians reside in the
6 said county of Johnson, and have for a long time past so resided.

That the said tribe of Indians keep up their tribal organization in said county, and have so kept up said tribal organization for a longer time before and ever since the organization of said county of Johnson; that their chief and headman reside therein, and their council meet in said co. for the transaction of all the business of said tribe or nation. Your petitioner further states that he brings this suit as well for himself as all other members of the United tribe of Shawnee Indians residing in the said co., who have land held as head rights or personal property taxed by the authority of the State of Kansas, or under the pretended authority of the laws of the State of Kansas.

That the question of the power of the State and county authorities of the State of Kansas to tax the real estate of the members of said tribe of Shawnee Indians, held by said members as head rights under the treaty made by said tribe with the United States, and the laws of the United States made to carry out said treaty, is one of
7 common and general interest to all the members of the United tribe of Shawnee Indians residing in the said county of Johnson; and that the members of the said United tribe residing in the said county of Johnson, and against whom it is threatened by the said def'ts to *to* enforce the collection of taxes on head rights and personal property belonging to said members of said tribe, are very numerous, and it would be impracticable to bring them all before this honorable court.

Your petitioner further represents to the court that under the 2d and 9th articles of the treaty concluded on the 10th day of May, A. D. 1854, between the said tribe of Shawnee Indians and the United States, the members of said tribe became entitled out of the lands ceded by said treaty, if a single person, to two hundred acres; and if the head of a family, a quantity equal to two hundred acres for each member of his or her family, and to a patent therefor, upon provision being made by Congress for issuing the same.

That by the 11th section of the act of Congress approved 3d of March, A. D. 1859, provision was made by Congress for issuing
8 patents to Indians under such restrictions as herein mentioned.

That he was, at the date of said treaty, and at the time of making his selection as herein stated, the head of a family, consisting of himself and five others, and that as such, by virtue of said treaty, he was entitled to select, as his head right, twelve hundred acres of land out of said lands ceded by said treaty. That after the date of said treaty, he selected as his head right, out of said lands ceded by said treaty, the following tracts or parcels of land lying and being in the said county of Johnson, to wit: the N. W. ¼ of sec. 36;

the S. E. ¼ of the S. W. ¼ of sec. 25, in town. 12 south, of range 24 east; the N. E. ¼ of sec. 35; the N. E. ¼ of the N. W. ¼ of sec. 35, in town. 12 south, of range 24 east; the N. E. ¼ of sec. 34: the N. E. ¼ of the S. E. ¼ of sec. 34, in town. 11 south, of range 24 E.; the N. ½ of the S. W. ¼ of sec. 35, town. 11 S., of range 24 east; the E. ½ of the S. E. ¼ of sec. 26; the S. W. ¼ of sec. 25, in town. 12 S., of range 24 east; the N. E. ¼ of the N. W. ¼ of sec. 2; the N. W. ¼ of the N. E. ¼ of sec. 2, in township 12 S., of range 24 E.; the S. ½ of the S. W. ¼ of sec. 32; the S. E. ¼ of the S. E. ¼ of sec. 34, town. 11 S., of range 24 east; the N. W. ¼ of the S. W. ¼ of sec. 2; the S. ½
9 of the N. W. ¼ of sec. 2; the S. W. ¼ of the N. E. ¼ of sec. 2; the N. W. ¼ of the N. W. ¼ of sec. 2, town. 12 south, of range 24, of the sixth principal meridian, containing in the aggregate twelve hundred acres and 82-100 of an acre.

That after your petitioner had selected, as his head right, the land aforesaid, the said selection was duly approved of by the authorities of the United States, and on the 28th day of Dec.. A. D. 1859, a patent therefor was duly issued to your petitioner, as the head of a family, for the said land so selected as aforesaid, with the stipulations therein prescribed by the Secretary of the Interior, under the act of Congress of March 3d, 1859, that said tracts shall never be sold or conveyed by the grantee or his heirs without the consent of the Secretary of the Interior for the time being.

That eleven hundred and twenty-seven acres of said land is still held by your petitioner as his head right, under the patent aforesaid. That the said def'ts claimed that they have a right, under the laws of the State of Kansas, to levy and collect county, State, and school tax on the land last aforesaid, and in default of payment to sell the same for said taxes.

10 That there is levied for various purposes on said land, taxes for the year 1862, the sum of eighty-three dollars and 22-100, which the said def'ts threaten to collect, and in default of payment to sell said land for taxes.

That said def'ts have levied a tax of $53 18 on the personal property of your petitioner for the year 1862, and threaten in like manner to collect the same from your petitioner. That the said def'ts have assessed in like manner all the lands in the said county of Johnson held by members of the United tribe of Shawnee Indians as head rights, and under patents similar in all respects to the one issued as aforesaid to your petitioner for his head rights, and levied thereon the taxes for A. D. 1862, and have also levied a tax on the personal property of each member of said United tribe of Shawnee Indians residing in the said county of Johnson, and threaten in like manner to collect the same, both on the personal property and on the said head rights. Your petitioner further states that the Shawnee tribe of Indians is an independent nation, having their own laws, usages,
and customs, and their own independent government, and have
11 been so held and treated by the United States from the organization of the Federal government up to the present time, ex-

cept so far as they have become dependent upon the government of the United States by treaty stipulations.

That the said tribe have never in any way surrendered either to the government of the United States, or to the State of Kansas, their national existence and the right to regulate their own affairs in their own way, or have the said tribe of Indians ever transferred to the State of Kansas, or to the United States, the right to levy and collect taxes on the head rights aforesaid of the members of said tribe, or on the personal property held by the individual members of said tribe.

That the head rights of your petitioner, and the head rights of all the members of the said tribe of Indians, are not subject or liable to be taxed under the laws of the State of Kansas.

The said State has no power or authority to pass any law authorizing a tax to be levied on either the head rights or the personal property of the members of the said tribe of Indians.

12 That all such taxes are illegal and without the authority of any binding law, and the collection thereof by the treasurer of said Johnson county, or by any other person, is without authority, and in violation of the rights of your petitioner, and the rights of those in whose behalf he sues as aforesaid.

Your petitioner further represents to the court, that on or about the 12th of Sept., 1862, he was compelled to pay to the said treasurer of Johnson county about the sum of one hundred and forty dollars for taxes levied previous thereto on land belonging to his said head rights in order to redeem the same.

That said taxes as paid by your petitioner, and so received by the said treasurer, was illegal and without authority of law, and should be refunded to your petitioner by the said def'ts.

Your petitioner therefore prays for the judgment of the court that the said pl'ff may recover of the said board of county commissioners, of the county of Johnson, the said sum of $140, with interest at the rate of ten per cent. per annum from the 12th day of Sept., 1862, and that a writ of injunction issue commanding the said de-

13 fendants, and each of them, to refrain from the collection of any taxes levied on the head rights of your petitioner, or on the head rights or personal property of any member of the said United tribe of Shawnee Indians residing in the said county of Johnson, and upon the final hearing of this case your petitioner prays that said judgment be made perpetual, and that the defendants pay the costs in this suit, and for such other and further relief in the premises as the court may deem equitable and just.

WILSON SHANNON,
Att'y for Pl'ff.

STATE OF KANSAS, *Douglas County, ss:*

Personally appeared before the undersigned, notary public in and for Douglas county and State aforesaid, Charles Bluejacket, who being by me duly sworn, deposeth and saith that the facts set forth in the within petition are true, and further he saith not.

CHARLES BLUEJACKET.

Sworn to and subscribed before me, this 9th day of May, A. D. 1863.

W. A. SIMPSON,
Notary Public in and for Douglas Co., Kansas.

14 And thereupon on the same day the pl'ff filed his præcipe for summons herein, which præcipe is in the words and figures following, to wit:

Præcipe.

State of Kansas, Johnson Co. dist. court.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians, residing in Johnson county, State of Kansas,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county.

The clerk of said court will issue a summons in the above case for the above-named def'ts, directed to the sheriff of Johnson co., and returnable according to law, indorsed "the summons" suit brought to enjoin the debts from the collection of all taxes on the head rights and personal property of the pl'ff, and the head rights and personal property of all the members of the United tribe of Shawnee Indians residing in the co. of Johnson aforesaid. Injunction allowed and bond given and approved May 9th, 1863.

WILSON SHANNON,
Att'y for Pl'ffs.

15 Indorsed:

STATE OF KANSAS, *Douglas County:*

An injunction is hereby allowed as prayed for in the within petition, upon the pl'ff giving bond to def'ts in the sum of $500, conditioned as the law directs, with security to be approved of by the clerk of the dist. court in Johnson county, May the 9th, 1863.

L. O. THACHER,
Judge of the Dist. Court of Johnson Co., Kansas.

Copy of bond filed herein.

Whereas Charles Bluejacket has obtained an order of injunction against the board of county commissioners of the co. of Johnson, in the State of Kansas, and J. W. Sponable, treasurer thereof, in an action pending in the dist. court within and for said county of Johnson, wherein the said Charles Bluejacket, who sues as well for him-

self as all other members of the United tribe of Shawnee Indians residing in the said county of Johnson, in the State of Kansas, is pl'ff,
and the said board of county commissioners of Johnson county and J. W. Sponable are deft's, on his going and undertaking to the said deft's in the sum of five hundred dollars. Now, therefore, we, Charles Bluejacket and Graham Rogers, hereby undertake to the said board of county commissioners of the county of Johnson and State of Kansas, and J. W. Sponable, in the sum of five hundred dollars, that the said Charles Bluejacket shall pay to the board of county commissioners of the county of Johnson and State of Kansas and J. W. Sponable all damages which they, the said board of co-commissioners and J. W. Sponable may sustain by reason of the issuing of the said injunction, if it should be finally decided that the said injunction ought not to have been allowed and granted.

16

Dated this 9th day of May, A. D. 1863.

CHARLES BLUEJACKET.
GRAHAM ROGERS.

Indorsed: Approved and filed this 9th day of May, A. D. 1863.
J. T. WEAVER, *Clerk.*

And thereupon at another day, to wit, on the 11th day of May, 1863, a summons issued on said præcipe, which said summons is in the words and figures following, to wit:

17

UNITED STATES OF AMERICA,
State of Kansas, Fourth District, Johnson County, ss:

The State of Kansas to the sheriff of Johnson county in said State, greeting:

You are hereby commanded to notify the board of county commissioners of the county of Johnson in the State of Kansas, and J W. Sponable, treasurer of said county, that they have been sued by Charles Bluejacket, who sues as well for himself as all the other members of the United tribe of Shawnee Indians, residing in the county of Johnson, in the State of Kansas, in the dist. court sitting in and for the said county of Johnson, and unless they answer by the 10th day of June, A. D. 1863, the petition of the said Charles Bluejacket against them filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on the 21st day of May, A. D. 1863.

18

Witness my hand and the seal of said court affixed at my office, in the town of Olatha, this the 11th day of May, A. D. 1863.

J. T. WEAVER, *Clerk.*
By S. B. MYRECK, *D. C.*

Indorsed: Suit brought to enjoin the def'ts from the collection of all taxes on the head rights and personal property of the pl'ff and the head rights and personal property of all the members of the

united tribe of Shawnee Indians, residing in the co. of Johnson aforesaid. Injunction allowed and bond given and approved May 9th, 1863.

WILSON SHANNON,
Att'y For Pl'ff.

Said summons was delivered to the sheriff, and by him returned with the following indorsement:

Not executed for want of time.

JOHN JAMES, *Sheriff*
By GEO. WHITE, *Und. Sheriff.*

19 And thereupon, at another day, to wit, on the 22d day of May, A. D. 1863, an alias summons issued, which said alias summons is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Kansas, Fourth District, Johnson County, ss:

The State of Kansas to the sheriff of Johnson county, in said State, greeting:

You are hereby commanded, as you have heretofore been, to notify the board of county commissioners of the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, that they have been sued by Charles Bluejacket, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, in the State of Kansas, in the dist. court sitting in and for Johnson county, and that unless they answer by the 22d day of June, A. D. 1863, the petition of the said Charles Bluejacket against them, filed in the clerk's office of said
20 court, such petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 2d day of June, A. D. 1863.

Witness my hand and the seal of said court, affixed at my office in the town of Olatha, this the 22d day of May, A. D. 1863.

J. T. WEAR, *Clerk.*

Indorsed: Suit brought to enjoin the defendants from the collection of all taxes on the head rights and personal property of the pl'ff, and the head rights and personal property of all the members of the United tribe of Shawnee Indians residing in the county of Johnson aforesaid. Injunction allowed, and bond given and approved May 9th, 1863.

WILSON SHANNON,
Att'y for Pl'ff.

Said summons was delivered to the sheriff, and by him returned with the following indorsements, to wit:

Executed this 27th day of May, A. D. 1863, by delivering a true copy to Jesse H. Jackson, co. clerk.

JOHN JAMES, *Sheriff.*
By GEO. WHITE, *Und. Sheriff.*

21 Executed on J. W. Sponable by leaving a true copy at his usual place of residence this 27th day of May, 1863.

JOHN JAMES.

And therefore, at another day, to wit, on the 1st day of July, 1863, the def'ts filed a demurrer herein, which said demurrer is in the words and figures following to wit:

Demurrer.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians,
vs.
BOARD OF COUNTY COMMISSIONERS OF JOHNSON county, and John W. Sponable, treasurer of Johnson county.

And now comes the def'ts, by Samuel A. Riggs, their att'y, and demur to the petition of the pl'ffs herein filed, for the reason that said petition does not set forth facts sufficient to constitute a cause of action against the def'ts.

SAMUEL A. RIGGS,
Att'y for Def'ts.

22 And thereupon, at another day, to wit, on the 17th day of September, 1863, it being the 4th day of the September term of said court, came the pl'ffs, by Wilson Shannon, their att'y, and came also the def'ts, by Samuel A. Riggs, their att'y; and this cause coming on to be heard upon the petition of the pl'ffs and the demurrer of the def'ts, and the court having heard the arguments of counsel, it is by the court considered that the demurrer of the def'ts herein is sustained, and that the temporary injunction heretofore granted in this cause be, and the same is hereby, dissolved, to which ruling of the court the pl'ff by his att'y excepts.

Whereof it is considered and adjudged by the court that the def'ts recover of the pl'ffs their costs in this behalf expended, and thereof let execution issue.

And be it further remembered, that this cause having been taken to the supreme court of the State of Kansas, and heard therein on the 9th day of September, A. D. 1864, there was filed in the clerk's office of the dist. court aforesaid a decision and a mandate of
23 the said September court, setting aside the judgment rendered in this cause by the said dist. court, and remanding this cause back to the dist. court aforesaid for trial.

And thereupon, at another day, afterwards, to wit, on the 16th day of June, A. D. 1865, it being the fifth day of the special term of the dist. court aforesaid were had the following proceedings in this cause, to wit:

Civil action.

CHARLES BLUEJACKET *et al.*
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Johnson county *et al.*

Now, at this day, comes the parties by their att'ys, and by consent of parties, and by leave of the court, the answer and the amended answer of the def'ts, and the replies thereto of the pl'ffs, are filed herein, and this cause coming on to be heard upon the pleadings and the evidence, and the evidence not being all heard, this cause is continued to 8 o'clock to-morrow morning.

And thereupon, upon the said day, to wit, on the 16th day
24 of June, A. D. 1863, the def'ts filed in the clerk's office of the court aforesaid their answer and their amended answer, and the pl'ffs filed their reply thereto, which said answer, and their amended answer, and reply thereto are in words and figures as follows, to wit:

Dist. court.

CHARLES BLUEJACKET, who sues at will for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said co.

STATE OF KANSAS, *County of Johnson:*

The def'ts, answering the pl'ffs petition herein filed against them, say, that except hereinafter stated, they admit pl'ffs' petition to be true, and as to those matters hereinafter stated, they deny the allegations of said petition. The def'ts allege that at the time of the treaty of May 10th, 1854, mentioned by pl'ffs' petition, said pl'ffs held and used in said county of Johnson, but without the fee simple thereto, about two hundred and sixty thousand acres of land;
25 that in pursuance of the treaty the said pl'ffs ceded to the United States all their right to said lands, and that in consideration thereof the United States granted to each single person in said tribe of Indians two hundred acres of land in fee simple, and to each head of a family for each member of his or her family the like number of acres in fee simple, to be selected by such grantees out of the aforesaid ceded lands; that when said selections were made and approved by the Secretary of the Interior, in pursuance of the

act of Congress of March 3d, 1859 as mentioned by pl'ffs', patents in fee simple were issued to the grantees for the lands respectively selected by them; that in accordance with said act of Congress the grantees in said patents mentioned held said granted lands absolutely, subject only to this restriction ; that the grantees should not sell or convey said lands without the consent of the Secretary of the Interior; that the aggregate of the lands selected by said Indians is about one hundred thousand acres; that these lands, so selected and
26 granted and patented are the lands in pl'ffs' petition set forth, and to enjoin the collection of taxes therefrom, for which this action is brought; that said lands do not lie in a contiguous or compact body, but instead thereof they are scattered over the entire area of the lands ceded by said tribe of Indians to the United States; that interspersed with said selected lands are the farm lands and roads and school districts and municipal townships (said districts and townships embracing and exercising their jurisdiction and legitimate functions over said lands) of the white citizens of said county; that said selected lands are in fact scattered over the whole body of said county; that they are traversed by the white citizens as well as said Indians in visiting each other going to mill and to various business centres of said county; that highways have been laid across said lands by the different tribunals in said county authorized so to do in said county, and frequently at the instance and request of the grantees of said lands; that since said lands have been patented to said
27 Indians, many of them have sold to their white neighbors, and to each other, such portions as they were allowed to do by the Secretary of the Interior; that said Indians trade and traffic and live with their white neighbors as they do with each other, and as such neighbors do with each other; that many of the Indians have intermarried with their white neighbors and friends; that their marriage ceremony conform to the laws of the State; that many of the members of said tribe of Indians, and who are pl'ffs herein, and who are grantees of said selected lands, are white men and women; that said white men are entitled to and do exercise the elective franchise at all elections in said county; that said Indians appeal to the different courts of justice of said county to protect their rights, not only as against their white neighbors, but as against each other; that offenders among them are brought by them before said courts of justice for trial and punishment; that said Indians invoke the aid and shield of the laws, courts, and institutions of the State as administered and enforced in said county to preserve
28 order, maintain justice, protect rights, and redress wrongs among themselves as well as among their white neighbors and themselves; that they use the common schools established in said county, and their children are entitled to the benefit of the different school funds; that on the decease of said Indians or any one of them their estates are subject to the laws of descent, inheritance, and distribution of the State, and are in fact administered upon and disposed of by their request and application in the probate court of said county; that many of the said Indians have paid the taxes levied upon their

said lands into the treasury of said county; that commercial business and social intercourse prevail throughout said county between said pl'ffs and the citizens and residents of said county. Wherefore, by reason of the premises, def'ts say that the injunction herein granted ought to be dissolved, and that the pl'ffs ought not to have or maintain their action against them.

THACHER & DEVENNEY,
Attorneys for Deft.

Amended answer.

Dist. court.

CHARLES BLUEJACKET *et al.*
29 *vs.*
JOHN W. SPONABLE *et al.*

STATE OF KANSAS, *County of Johnson:*

The defendants expressly deny that part of the pl'ffs' petition that alleges that the Shawnee tribe of Indians are an independent nation, having their own laws, usages, and customs, and their own independent government; that they are so held and treated by the general gov't, but the def'ts say that the lands patented to and held by in severalty by said pl'ffs are not under the tribal control at all, but are individual property of each patentee; that of these patented lands, which have been sold by the patentees, farms have been made by the purchasers, white citizens, of said co. on them; they have erected houses and other valuable improvements, and that such purchasers are living in neighborhood with such patentees, the same as though they were white citizens; and the defendants deny that such patented lands as are set forth in pl'ffs' petition are exempt from taxation, or that the personal property of such patentees is exempt from taxation, or that the State of Kansas have no right or power to tax said lands and property, or that such taxes so levied are
30 illegal, or that the collection of such taxes is without authority or in violation of the rights of the plaintiffs, or either of them. The def'ts deny all the allegations of the petition, except those admitted by their answer, and of this put themselves on the country.

ROY, DEVENNEY & THACHER,
Def'ts' Att'ys.

Replication to answer.

The State of Kansas, Douglas county, dist. court.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, and State of Kansas, pl'ffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, def'ts.

And now comes the said pl'ffs, by Wilson Shannon, his att'y, and for replication to the answer of the said def'ts, say that except so far as the said answer admits the allegation contained in the pl'ffs' said petition, he, the said pl'ff, denies the truth of each and every allegation contained in the said def'ts' said answer, in manner
31 and form as the same are in said answer stated, and this the said pl'ffs pray, &c.

WILSON SHANNON,
Att'y for Pl'ffs.

And be it further remembered that another day, afterwards, to wit, on the 17th day of June, 1865, it being the 6th day of the special term of the dist. court aforesaid, were had the following proceedings in this cause, to wit:

Civil action.

CHARLES BLUEJACKET *et al.*
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Johnson county *et al.*

Now at this day comes the parties, by their att'ys, and the evidence being all heard, and there not being time to conclude the arguments of counsel, this cause is continued to 8 o'clock Monday morning.

And be it further remembered that at another day, afterwards, to wit, on the 19th day of June, A. D. 1865, it being the 7th day of the special term of the dist. court aforesaid, were had the following proceedings in this cause, to wit:

Civil action.

CHARLES BLUEJACKET *et al.*
vs.
32 THE BOARD OF COUNTY COMMISSIONERS of Johnson county *et al.*

And now comes the parties, by their att'ys, and the argument of counsel being all heard, this cause is taken under advisement by the court.

And be it further remembered that at another day, afterwards, to wit, on the 22d day of June, A. D. 1865, it being the 10th day of the special term of the dist. court aforesaid, were had the following proceedings in this cause, to wit:

Civil action.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, in the State of Kansas,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the co. of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county.

Now comes the parties, by their att'ys, and the court having had this cause under consideration, and having maturely considered the same, doth find the issues in said action joined in favor of the def'ts.

33 It is therefore ordered, decreed, and adjudged that the order of injunction heretofore granted in this action be dissolved, and that the def'ts go hence without day, and recover of the pl'ffs their costs herein expended, taxed at $—, and thereof let execution issue; to all of which the pl'ffs except, and file their bill of exceptions.

And thereupon on the same day, to wit, on the 22d day of June, A. D. 1865, the pl'ffs filed in the clerk's office of the dist. court aforesaid their motion for a new trial in this cause, which said motion is in words and figures following, to wit:

Motion for new trial.

State of Kansas, Johnson county, dist. court.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, def'ts.

34 And now comes the said pl'ff, by Wilson Shannon, their attorney, and moves the court here for a new trial in the cause, for the reason that the judgment and decree of the court is against the law and the evidence of the case, and also against the equity of the case.

WILSON SHANNON,
Attorney for the Pl'ffs.

And thereupon, on the same day and date, to wit, on the 22d day of June, A. D. 1865, the pl'ffs filed in the clerk's office of the dist. court aforesaid their bill of exceptions, which said bill of exceptions are in words and figures following, to wit:

35 *Dist. court, special term held in June, 1863, of said court in said county.*

State of Kansas, county of Johnson.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, defendants.

This cause coming on to be heard by the court, the pl'ffs, to maintain the issues joined in this case on his part, introduced the following witnesses:

Charles Bluejacket, who, being duly sworn, testified that he is the pl'ff in this suit; that he is, and always has been, a member of the United tribe of Shawnee Indians; that he selected his head rights under the treaty of the 10th of May, A. D. 1854; and that he resides thereon. I am the Shawnee head chief, and have held that position four years next new year's. Graham Rodgers held the office before me for about two years. Paschal Fish, a Shawnee Indian, held that office before Graham Rodgers; he held the office about one year. Capt. Joseph Parks held the office before Fish; and Rodgers Parks held the office about six years. There is a second chief. Graham Rodgers is the second chief now of the Shawnees. The Shawnees have a council consisting of five men; they are selected for one year. They have a sheriff, who is also elected for one year: they have a clerk of the council, who is elected in like manner
36 same length of time; the Shawnees have an in[illegible] tribe, who is appointed by the government of States. Mathew King, a Shawnee, holds that place at present. The Shawnees have a place for the council and head men to meet in and counsel to transact business. They meet at this time in a vacant house on my premises, owned by me as a head right. I am forty-eight years of age. The Shawnees keep up the same organization now that they always did within my recollection. The number of the Shawnee Indians belonging to the tribe is about 860, not including the absentees; including the absentees, their number is over 1,100; nearly 1,200 persons. The Shawnees have a stated time for the council to meet, which is the first Monday in every month. The powers of the tribe, when in council, is regulated by custom. The Shawnee tribe of Indians have their own customs and their own regulations by

And be it further remembered that at another day, afterwards, to wit, on the 22d day of June, A. D. 1865, it being the 10th day of the special term of the dist. court aforesaid, were had the following proceedings in this cause, to wit:

Civil action.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, in the State of Kansas,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the co. of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county.

Now comes the parties, by their att'ys, and the court having had this cause under consideration, and having maturely considered the same, doth find the issues in said action joined in favor of the def'ts.

33 It is therefore ordered, decreed, and adjudged that the order of injunction heretofore granted in this action be dissolved, and that the def'ts go hence without day, and recover of the pl'ffs their costs herein expended, taxed at $—, and thereof let execution issue; to all of which the pl'ffs except, and file their bill of exceptions.

And thereupon on the same day, to wit, on the 22d day of June, A. D. 1865, the pl'ffs filed in the clerk's office of the dist. court aforesaid their motion for a new trial in this cause, which said motion is in words and figures following, to wit:

Motion for new trial.

State of Kansas, Johnson county, dist. court.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, def'ts.

34 And now comes the said pl'ff, by Wilson Shannon, their attorney, and moves the court here for a new trial in the cause, for the reason that the judgment and decree of the court is against the law and the evidence of the case, and also against the equity of the case.

WILSON SHANNON,
Attorney for the Pl'ffs.

And thereupon, on the same day and date, to wit, on the 22d day of June, A. D. 1865, the pl'ffs filed in the clerk's office of the dist. court aforesaid their bill of exceptions, which said bill of exceptions are in words and figures following, to wit:

35 *Dist. court, special term held in June, 1863, of said court in said county.*

State of Kansas, county of Johnson.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians residing in the county of Johnson, State of Kansas, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, defendants.

This cause coming on to be heard by the court, the pl'ffs, to maintain the issues joined in this case on his part, introduced the following witnesses:

Charles Bluejacket, who, being duly sworn, testified that he is the pl'ff in this suit; that he is, and always has been, a member of the United tribe of Shawnee Indians; that he selected his head rights under the treaty of the 10th of May, A. D. 1854; and that he resides thereon. I am the Shawnee head chief, and have held that position four years next new year's. Graham Rodgers held the office before me for about two years. Paschal Fish, a Shawnee Indian, held that office before Graham Rodgers; he held the office about one year. Capt. Joseph Parks held the office before Fish; and Rodgers Parks held the office about six years. There is a second chief. Graham Rodgers is the second chief now of the Shawnees. The Shawnees have a council consisting of five men; they are selected for one year. They have a sheriff, who is also elected for one year; they have a clerk of the council, who is elected in like manner and for the
36 same length of time; the Shawnees have an ~~interest~~ agent for the tribe, who is appointed by the government of the United States. Mathew King, a Shawnee, holds that place at present. The Shawnees have a place for the council and head men to meet in and counsel to transact business. They meet at this time in a vacant house on my premises, owned by me as a head right. I am forty-eight years of age. The Shawnees keep up the same organization now that they always did within my recollection. The number of the Shawnee Indians belonging to the tribe is about 860, not including the absentees; including the absentees, their number is over 1,100; nearly 1,200 persons. The Shawnees have a stated time for the council to meet, which is the first Monday in every month. The powers of the tribe, when in council, is regulated by custom. The Shawnee tribe of Indians have their own customs and their own regulations by

which they are governed. We have a custom in relation to offences committed by one Shawnee against ; the council try the offender, the head chief carry into effect the decision of the council. The council fixes the punishment. There has been one case tried by
37 the Shawnee council for murder, where one Shawnee was charged with murdering another Shawnee. The def't was found guilty, and the punishment fixed by the council was death, and he was executed. The sheriff of the Shawnee executed the sentence. This was in the year 1856 or 1857. They are still in the habit of punishing Shawnees for offences against Shawnees. We have a national school fund and a school fund of our own. The interest on the national school fund is about $5,000 per annum. We have what is called the mission school, carried on under the direction of the Society of Friends or Quakers. The old Shawnee mission school was done away with some two or three years ago, because old man Johnson had not complied with his contract. There is a Sunday school for the Shawnees still kept up at the Quaker Shawnee mission. If one Shawnee is indebted to another, who refuses to pay, the one having the claim goes to the Shawnee council and makes complaint; the council order their cl'k to issue a writ notifying the def't to appear at the next regular council day; the council hear and determine the case, and order the party to pay the money; and when annuities were received, the council would order the annuity of def't to be stopped and applied to the payment of the debt. Our annui-
38 ties stopped in 1863. That was the last payment due from the government. The United States has a Shawnee Indian agent for the Shawnees, who resides amongst us. There has always been a United States agent residing among the Shawnees. The present agent is May Abbott. The Shawnees have a treaty now pending with the United States. In 1863, the Shawnees, by their head men, signed a treaty with the United States, and it was sent to Washington city. It was signed by the men who were appointed by the nation to make a treaty, and the treaty is in Washington city yet; it has never been acted on by the Senate. This treaty (the last treaty) was drawn up in 1864, and is still pending. I was one of the delegates from the Shawnee nation to make the treaty. The head men or chiefs get their offices by the vote of the Shawnee people. All the Shawnees over the age of fifteen years are allowed to vote.

Cross-examination:

L. Flint is our present sheriff. We meet at a vacant house on my land. We have met about six months at our present place. We have been in the habit of meeting at different places. When the agent calls a council we meet at De Soto, where our agent resides.
39 We formerly met at Shawneetown, in a church. The church is at one side of Shawneetown, about 300 yards from the public square. Some of the lots in Shawneetown belongs to town company, and some to individuals. We have councils all along; sometimes we met at Tucker's, and sometimes we met at De Soto, when the agent calls a council. We met sometimes in Capt. Keel-

er's building, in Shawneetown; it is built on land bought of Randall, an adopted Shawnee. We met a few times in the parsonage. There has been no change in the meetings of the councils for some years; the regularity of meetings about the same. We had, some time ago, a written book which we used about *about* eight years, showing what this council could and could not do. That book has been lost for some five or six years. We have punished no man for crime since we hung the man above referred to. There has been crime committed since. The man we hung was Tom Daugherty, a Shawnee Indian; there was a good many white people about when Daugherty was hung. The council tried Daugherty; there was no whites at the council when Daugherty was tried. I don't now remember when
the last debts were passed on by the council; don't remember
40 of any since 1856 or '7. David Daugherty was a Shawnee Indian. H. Carpenter was killed at his house by C. Barnett, for stealing. We make the party guilty payable of double the value of the property. We have tried no cases of stealing within my recollection. Shawnees do not steal much. We try to do in our organization just what we have always been doing. We don't owe much. The debts were all settled up when the big payments were made by the government. The members of the council get pay. The Shawnee council do not pretend to control my land or other head rights. The horses and grain I raise are mine; the council have no control over them, and do not exercise control over personal property of Shawnees. There are about six or eight adopted Shawnees among us. They do not tax a poor tax among us. Some few whites have married Shawnee women. The council never grant divorces. A Shawnee can divorce his own wife if he has any fault to find. Sometimes Shawnees are married by ministers. The adopted Shawnees live on patented head rights. There are two Quaker families at the Shawnee school, and $5,000 is given them annually to keep up
the school. I send my children to the Quaker school. There
41 is 45 or '6 children attend the Quaker school. There are about 300 children among the Shawnees. George Daugherty had the head right first of the land where Carpenter was killed; he sold to Ellege, by the approval of the Secretary of the Interior, and he sold to David Daugherty, who was living there at the time Carpenter was killed.

Re-examination:

I can't sell my land, or any part thereof, without the consent of the Secretary of the Interior. In selling land, we have to comply with the rules and regulations of the Secretary of the Interior. We had a custom in old times as to marriages. This custom still prevails among a portion of the tribe; and another portion, the most, get married by ministers. The Shawnee council still recognize those who are married, according to the old custom, as man and wife. The council let the Shawnees do as they please—either get married by a minister, or according to the old custom. As to heirs: in the first place they go to the council if there is any question as to who are heirs,

and the council investigates the matter and decide who are heirs; the two chiefs certify to it. When Shawnees die, they go to probate court and get administration. In two cases the council made
42 sale of personal property deceased persons, and put the funds away for the children. These were very small estates. They sold personal property about one year ago. Some of the Shawnees have sold part of their head rights to whites, who have settled thereon and improved the same. Roads are laid out through their head rights by county and State officers. These lands can be sold to whites, if the Secretary of the Interior will permit. On some of these lands so purchased, whites have farms, houses, orchards, and school houses, and the Shawnees and the whites live together as neighbors and friends, trafficking with each other as the whites do with each other. Shawnees hire whites to work for them, and whites hire Shawnees.

Samuel M. Comatzer, being duly sworn, saith that he is a member of the Shawnee tribe of Indians by adoption. I reside among them, and have ever since the year 1849. I got 800 *hundred* acres of land as a head right. I was the head of a family. I am clerk of the Shawnee council. I attend the meetings of the council regularly. I keep a record of the business transacted in the council; any difficulties between members of the tribe they set as a council to
43 determine the same. I have been clerk ever since June, 1856. Since that time there has been quite a number of difficulties settled by the council. Shawnees who die, the council appoint persons to sell the personal property and pay the debts. They appoint the men to sell; order the sale to pay the debts. This is the custom. The council takes cognizance of offences committed by one Shawnee against another Shawnee; they determine the punishment; they have hung one man for murder since I was clerk; he was Tom Dougherty. The Shawnees have a custom of their own with regard to marriage since I have been a member of the tribe; some marry according to the old custom and some marry by the minister; Charles Bluejacket is our minister; the more enlightened portion go to him to perform the ceremony; he has a ceremony of his own; some are still married according to the old custom; each mode of getting married is considered by the Shawnees as valid. The Charles Bluejacket who is minister is the same who is pl'ff and head chief. We keep a record in the council in relation to all the transactions relating to orphans and the disposal of property of deceased persons, &c.;
44 for offences of Shawnees against Shawnees, the party found guilty is fined, the value of the thing stolen is paid to the owner, and a like value paid to the council, and goes into the council fund. There has been cases of this kind since I have been clerk, but not a very great many. There was one case where a Shawnee was charged with manslaughter; the council found him guilty, and sentenced him to one hundred lashes, and to be expelled from the tribe, and to lose his annuity; but that sentence was not executed, owing to the opposition of some of the tribe; this took place in 1860 or 1861; it was just before the war, and the defendant went into the

service. The last estate settled in the council was the estate of Eliza Flint. She died in the fall of 1864. She had but a few things to administer on. There is one estate which is not yet settled up, the estate of Wm. Rodgers; he died in the fall of 1864. The council do not order the sale of real estate, and do not take control of our lands. I am the adm'r of the estate of James Suggott, deceased, who was a member of the Shawnee tribe. I am administering the estate through the probate court of Johnson county. There
45 is one minor, and I am the guardian appointed by the probate court of Johnson county. I was curator of an incompetent Indian, appointed by the probate court of Wyandotte county, in Kansas. We sell head rights to white men, according to the rules prescribed by the Secretary of the Interior. White men have bought parts of head rights, made farms, and planted orchards on the lands they have bought. I know of two or three cases of this kind. Isaac is an adopted Shawnee. I never voted but once that I recollect of, and that was when the Missourians came over to vote. I thought I had as good a right to vote as they had. I have never voted since this was a State. I never was present at an Indian marriage, according to the old custom. We are a church body alone. We are not connected to any other church. Charles Bluejacket is an exorter, but nothing more. There is State and county roads and town roads leading out through Shawnee lands. There is a road laid out by county through my land. The last man that was fined was in 1863; he had stole something; within the last five years there has been a number of persons punished. I sent my children at one time to Mr. Blodget to school, but I paid him for it. A number of
46 Shawnees voted at the election for county seat in 1858. Shawneetown was a candidate. I was judge of township election in 1863, district.

In the case of William Fish, arrested for shooting Robert Bluejacket by the sheriff of Johnson county, the council directed me and the Shawnee sheriff to demand him of the sheriff of Johnson county, to be delivered over to the council for trial; we did so, and he was delivered up to us. Fish and Bluejacket were both Shawnee Indians; this took place in 1858, in the fall; he was tried before the council and acquitted.

Wm. Holmes, being duly sworn, saith that in 1858 I brought a suit on a note in favor of James Suggett against A. B. Squires. I was the att'y of pl'ff; the suit was in the dist. court of Johnson county, and was dismissed by the court on the grounds that the pl'ff was a Shawnee Indian; this was the Territorial court.

Cross-examined:

I lived in Shawneetown some time; the great body of the claim I had against Shawnees was collected of the council. Sometimes the council would refer me to the courts of the State, that they
47 were open; this was in cases disputed. Some of the cases were Shawnees against whites, and some whites against Shaw-

nees, and some between Shawnees. After annuities ceased they settled no claims, and refused to do any business—business on administrator's estate.

Isaac Parris, being duly sworn, saith: I am a Shawnee by adoption, and have been since the fall of 1849, and have resided among the Shawnees ever since. I was never at but one trial, that was in the spring of 1858. I was sent for as a person to try Wm. White for murder; a Shawnee came after me. I went and set on jury; there was twelve men on the jury; Paschal Fish was head chief at the time; he was present at the trial. The def't was a Shawnee. We brought in a verdict of murder in the second degree. Previous to that time I saw punishment inflicted by Shawnee council on a Shawnee by the name of Blackfists; there was inflicted on him 39 lashes; he had been convicted of an assault with intent to commit a rape on a Shawnee woman. I saw Tom Dougherty hung by order of the council for murder; I think this took place in 1857.

Cross-examination:

I got, as the head of a family, 800 acres of land under the
48 treaty. I was sheriff of this county in 1855 and '6. I vote where I want to vote, but can't say that I have voted most of the time since 1858. I send my children to my own school; not to a free school. I tried to get a school dist. in my neighborhood. I have hired a teacher of my own. About a ½ of the land in the school district I live in belongs to Shawnees; my own children are all the Shawnees that go to the school. I have seen no punishments since 1857–'8, but have seen fines inflicted by the council since 1858; they were for minor offences. All the business I ever had to do with the Shawnees I settled in the Shawnee courts; when I have to do with whites I go into the State courts. Shawnees intermarry some with the whites. I have paid some of the taxes levied on my land to keep it from being sold. Some Shawnees marry one way and some the other; they agree to go together as man and wife, and they are considered as man and wife as long as they live together.

I was born in the State of Virginia. Moved, when young, to Ohio.
I came out to Kansas in 1846. I never thought that being a
49 Shawnee took away my right, as a citizen, to vote.

J. B. Abbott, being duly sworn, saith: I am an Indian agent for the Shawnee tribe of Indians, and have been for the last four years. I keep my office at De Soto, in this county. I should think that the lands selected as head rights in the county would be about 99,728 acres, the Black Bob land, held in common, is about 33,392 acres. The United States have been treating with the Shawnee tribe of Indians since I have been in office. There was a treaty signed by the Shawnees in 1862, and sent to Washington. That treaty was not approved by the Commissioner of Indian Affairs. It was returned, and a draft of a treaty was recalled by the commissioner by letter dated

6th of August, 1862, and another draft of a treaty was sent me, accompanied by a letter dated 29th of Dec., 1862, signed by Mr. Dole, as commissioner, and Mr. Mix, as chief clerk. This draft of a treaty was laid before the Shawnees, and filled up and signed, and in January, 1864; a delegation of the Shawnees went on with the treaty to Washington, and it was remodelled in Washington, and *and* signed by Shawnee delegation and Commissioner Dole, and sent to President, and is now pending in Senate for ratification. I transacted
50 my business with the Shawnee council and head men of the nation.

Cross-examination:

In consequence of the printed instructions in evidence, I have followed them in relation to minors and others embraced therein. I am clerk of the school dist. in which I reside. There is no Shawnee children sent to that school. Mathew King sent two children to the school in 1862, but paid for their schooling. He lived out of the dist. I have heard Mathew King say he was a foreigner, but had declared his intention to become a citizen, and he claimed he had a right to vote. All estates of deceased Shawnees that want to go into probate court I send them to that court, under instruction from the department at Washington. I have sent some cases to the probate court of the different counties where the land was selected. The Shawnees have sold about $\frac{2}{3}$ of what they are permitted to sell.

By agreement of counsel for the deft's, the pl'ffs gave in evidence a map of lands showing the selections of the Shawnees of lands under the treaty of 10th of May, 1854. It is agreed further, by counsel for pl'ff and def't, that the tracts in red lines on said map
51 show the head rights selected by the Shawnees, the tract in yellow is the Black Bobb, and held in common; the blue lands, on the west of Johnson county, are the absentee lands; the green line on the west is the western boundary of Johnson county; the green line on the south is the south boundary of Johnson county, and the north boundary of Miami county. The white portion of the map was government land, not selected by the Shawnee Indians. It is agreed that the map is correct, and agrees with the maps in the office of the Indian agent. It is agreed further that said said map may be used and treated as a part of the record in the Supreme Court, and that, in that the mean time, the lands sold by Shawnee Indians belong to their head rights, may be designated and marked on said map so as to show the selection of each tract sold. It is further agreed that the towns and municipal townships may also be marked on said map; the printed instructions from Washington city, hereto attached and marked "A," were also. by consent of counsel for def'ts, given in evidence by the pl'ffs in this case.

52 Rules and regulations to be observed in the execution of conveyances of lands which have been or shall be assigned in severalty to Indians within the Territory of Kansas, and for which patents shall be issued in conformity with the 11th section of the act of Congress entitled an act making appropriations for sundry civil expenses of the government for the year ending the 30th of June, eighteen hundred and six, approved March 3, 1859:

Individual Indians reserves are divided into two classes, those which are and those which are not included within the boundaries of a tribal reservation; the former are inalienable, except to Indians by birth, members of the tribe to which the reservee belongs; the latter are alienable under the following conditions:

1st. The deed or instrument of conveyance must be executed in the presence of two subscribing witnesses, and acknowledged before the agent within the limits of whose agency the reservee resides, and, when presented for approval, must be accompanied by the following certificates, viz:

1. A certificate, signed by two of the chiefs of the tribe to
53 which the reservee belongs, setting forth that the grantor is the identical individual to whom the land was originally granted, or in case the original reservee be dead, that the grantor or grantors, as the case may be, are the only heirs surviving of the original reservees, that he, she, or they, as the case may be, are severally of age, and competent to manage his, her, or their affairs, and to dispose of his, her, or their property, and that they think it advisable that the land should be sold.

2. A certificate from the agent of the tribe to which the reservee belongs that the contents, purport, and effect of the deed of conveyance were explained to and fully understood by the grantor or grantors; that the considerations specified therein is a fair price for the land, that the same has been paid to the grantor or grantors in his presence in gold or silver coin of the United States, and that the conveyance is in every respect free from fraud and deception.

3. If the original reservee be dead, and the conveyance is executed by fewer than all his or her heirs, then, in addition to the certificates above required, with the necessary changes therein, the conveyance must be accompanied by a properly authenticated copy of judicial proceedings, showing that partition of the lands granted to the
54 original reservees has been made by a court having jurisdiction thereof, and a diagram, prepared by a competent surveyor, showing the lots into which the original tract has been divided and the respective owners of the same.

2. Lands belonging to an incompetent, if an adult, may be conveyed by a curator or conservator, and if a minor, by a guardian, in which case the conveyance must be accompanied by a certificate of two chiefs of the proper tribe as to the identity and the incompetency of the grantor, and that the sale is advisable, a certificate of the agent for the tribe to which the incompetent belongs that the consideration specified is a fair and just price for the land, and has been paid in his presence to the grantor in gold or silver coin of the United

States, and that the conveyance is in all respects free from fraud, and properly authenticated copy of the records of a court having jurisdiction showing the appointment of such curator, conservator, or guardian, as the case may be, and a like authenticated copy of judicial proceedings in a court having jurisdiction, authorizing such curator, conservator, or guardian to make sale of the lands
55 mentioned in the conveyance.

3. If the reservee, or in case he may dead, his heir or heirs, do not reside within the bounds of an Indian agency, the deed of conveyance may be acknowledged before a justice of the peace, or other officer having legal jurisdiction; and in lieu of the certificates of the chiefs and Indian agent in other cases required, must be accompanied by a certificate of the office taking the acknowledgement of the facts required to be certified by the chiefs and agent in cases where the grantor resides within the bounds of an Indian agency, or if such facts shall not be known to the officers they must be verified by the affidavits of at least two creditable persons who are cognizant of these facts, whose veracity must be certified by such officer, and the testimony, and all papers pertaining to the conveyance must be properly authenticated under seal; in all other respects the conveyance must conform to the rules above prescribed.

4. A diagram, prepared by a competent surveyor, or an authenticated copy of the official plat of survey, indicating the land
56 intended to be alienated, and all former sales by the original reservee, his or her heirs, must be furnished for the use of the Indian office.

5. No reservee will be allowed to sell more than half of the land assigned to him (or her) under treaty stipulations, except in special cases where circumstances, to be determined by the Secretary of the Interior, may seem to require a relaxation of the rule.

No sale or conveyance which does not substantially conform to the foregoing regulations will receive the approval of the def't.

DEPARTMENT OF THE INTERIOR, OFFICE INDIAN AFFAIRS,
May 27*th*, 1861.

The foregoing rules and regulations designed for the government of the respective parties, in the execution of deeds of conveyance pertaining to the alienation of lands assigned in severalty to Indians, within the State of Kansas, are respectively submitted to the Secretary of the Interior, with a recommendation that the same may be approved.

WM. DOLE, *Commissioner*.

DEPARTMENT OF THE INTERIOR, *May* 27*th*, 1861.

57 The above rules and regulations are hereby approved, as recommended by the Commissioner of Indian Affairs.

CALEB B. SMITH, *Secretary*.

State of Kansas, Johnson co., district court.

CHARLES BLUEJACKET, who sues as well for himself as all the members of the United tribe of Shawnee Indians, residing in the county of Johnson, State of Kansas, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE county of Johnson, in the State of Kansas and J. W. Sponable, treasurer of said co., de'fts.

It is admitted by the counsel for the def'ts in this case that the pl'ff, Charles Bluejacket, is a Shawnee Indian, residing in the county of Johnson, and that he selected as his head rights under the treaty between the United States and the Shawnee tribe of Indians, on the 10th day of May, 1854, the said lands described in said petition, and that said selections were approved of as provided for by the treaty of the United States, and that a patent was issued to him for the same, as in said petition set forth; that the def'ts have assessed said
58 lands, and the lands or head rights of all the members of the Shawnee tribe of Indians, residing in the said co. of Johnson, and caused the said lands so held by the said pl'ff, and those in whose behalf he brings this suit, to be taxed, as in said petition set out, and that said def'ts have levied taxes on the personal property of said pl'ff, and those for whom he sues, under the laws of the State of Kansas, the same as on personal property of the citizens of the State residing in said county, and the def'ts claim the right to collect said taxes, levied on said head rights and personal property as in the petition stated, and are proceeding to collect the same as in said petition stated.

ROY. DEVENNEY & THACHER.

And thereupon the def'ts, to maintain the issue joined on the part, introduced the following testimony:

D. G. Campbell, being first duly sworn, testified: I reside in Shawneetown in this county. I am clerk of the school dist. board in my district; been connected with the school dist. as a teacher or clerk for the last three years. A portion of the Shawnee children of the dist. attend the school. The No. is about sixteen; they are
59 enumerated and draw the common school fund the same as the white children. I know Wm. Donaldson, Fred. Chonteau, M. P. Randall, to be adopted Shawnees. They always vote at school elections and all other elections. Roads are laid out through the Indian lands on petition of Indians as well as whites; they also remonstrate against such laying out of roads. When I was in the legislalature, I presented a remonstrance signed by Shawnees against a road being laid out. I am a minister of the gospel; have married Indians according to the custom of Christians. As justice of the peace issue executions on judgments, on my predecessor's docket, in favor of whites

and against Indians; the suits were brought by whites; quite a number of Shawnees in that vicinity. The wives of the adopted Shawnees are Shawnee women. In a district within a radius of about four miles about Shawneetown, about two-thirds of the lands that Shawnees can sell have been sold to whites by them; on these sold lands the white purchasers have opened farms, built houses, laid out orchards, and have erected valuable improvements; the remaining lands are largely enhanced by the purchases and improvements. The whites and Indians live on neighboring farms, and trade and traffic and deal
60 with each other, as do whites. We cross and recross these lands as well as those of the whites in going to and returning from our towns, and transacting business generally; the most valuable improvements have been made on those purchased lands. School districts embrace Indian lands as well as white lands, and the same is true of municipal townships.

L. F. Blodgett, being duly sworn testified:

I am probate judge of the county of Johnson. Have granted letters of administration on three Indian estates since I have been in office. Been in office a little over two years. My rule is to appoint Indians as admr's. Have appointed at least fifteen, I think more, guardians for Shawnee Indian children; this has been done at the instance of the Shawnee relation or friends. My record show three Indian estate before I came into office; in my office two-thirds of all sales of real estate are of Indian lands, sold by guardians; about one-tenth of all the business in my office relates to Indian estates. I taught a dist. school in Shawneetown before I was judge, and before Mr. Campbell, the last witness, taught; in addition to the Shawnee children enumerated by them as attending my school, were also the children
61 of Shawnees, of John Parks, Geo. Daugherty, Henry White, and Robt. White; they were all enumerated with the white children, and drew funds from the common school fund the same as white children. I think two-thirds of the improvements in the neighborhood are made by Shawnees; the lands of Indians bought by whites were mostly unimproved lands, and have been improved by them; the best lands are retained by Shawnees, the best as to improvements, and location and value. I know of all the adopted Shawnees voting at different elections.

F. E. Henderson being duly sworn, testified.

I am county clerk of this county. In my office I find petitions for laying out of roads signed by Shawnee Indians through their lands as well as those of the whites. The witness here produced petitions which were offered and read in evidence as follows:

1. Road petition signed by Graham Rodgers, John Parks, John McClane, and James McClain, for a road through Shawnee land; these were Shawnee Indians.

2. Bridge petition for bridge on Shawnee lands, signed by M. King, Shawnee interpreter.

62 3. Petition for road through Shawnee lands, signed by the following Shawnee Indians, James Longtail, Charles Tucker, James G. Johnson.

4. Petition for road through Shawnee lands, signed by Matthew King, Shawnee.

5. The same, signed by Graham Rodgers and John Parks.

6. The same, signed by T. M. Conatzer and David Dresham.

7. Dramshop petition for Shawneetown, signed by Fred. Chouteau, a Shawnee.

8. The same, for Monticello tp., signed by Isaac Parish, a Shawnee.

9. The same, for Shawneetown, signed by M. P. Randall, F. E. Bailey, and John Parks, all Shawnees.

10. The same, for McCamest tp., signed by Samuel Rodgers and Wm. Rodgers, both Shawnees.

11. Road petition through Shawnee lands, signed by John W. Boyle, a Shawnee.

12. Dramshop in Monticello tp., signed by Isaac Parish and Wm. Conteau, both Shawnees.

13. The same, signed by J. Elliott, I. Parish, and Samuel Garrett, Shawnees.

14. The same, signed by Samuel Rodgers and Lewis Rodgers, Shawnees.

15. Road petition, signed by Dudley Tucker and J. W. Boyle, Shawnees, and a road through Shawnee lands.

63 Petition for establishing new voting precinct, by Wm. Donaldson, Shawnee. The signers to said petitions were on the trial produced and admitted to be Shawnees, either by birth or adoption. The witness also produced the marriage record in his office, which showed that there was in his office recorded twenty-three marriages of Shawnees and of Shawnees and whites. My records also show that the adopted Shawnees have served on juries, both grand and petit, to wit: Samuel Cornatzer, Isaac Parish, Wm. Donaldson, and Samuel Garrett. My records show that in some criminal cases, where Shawnees were def'ts, the county has been taxed $674\frac{75}{100}$. There are several other cases, but I have not estimated them. The witness produced the poll-books in his control, and testified that at the different elections, from 1858 until the present time, Shawnees have voted in their townships; that most of those voting were adopted Shawnees, though the native Shawnees had participated at some of them.

J. B. Abbott, witness called by pl'ff, was called by def't and testified that the lands drawn by adopted Shawnees as their head
64 rights is between eight and nine thousand acres, as the records in his office shows. Whenever a Shawnee sells lands I send deed to department for approval. The department approves deeds of sale from Shawnees to whites. It was offered to prove by this witness that M. King was a Shawnee, and voted at elections in his precinct, which the pl'ffs admitted to be true. The treaty now pend-

ing refers to sale of absentee lands and removal of restrictions on sale of head rights, and also to sale of Black Bobb lands. By it the proceeds of the sale of this land goes to the Black Bobb Indians. The patentees have no rights in them.

M. C. Smith being called for, after being duly sworn, testified: I have taught school during the past two years in Monticello tp., Johnson county; taught a common school—the children of Levi Flint, a Shawnee Indian, also Mr. Samuel Garrett, a Shawnee, and Mrs. Ham, a Shawnee, sent to the school. I was paid by the dist. as other teachers of common schools; have heard Flint and Garrett say that they had a right to send to school, as they paid taxes. Think the school dist. was laid out at request of Shawnees as well as whites.

65 G. W. Walker, being duly sworn, testified: I have resided in Monticello tp. since 1858. Teach dist. school in dist. No. 33, in building, the dist. school house. Mrs. Levi Flint, a Shawnee, was member of the building committee, appointed at school dist. meeting, and acted as such. The dist. embraces Shawnee lands as well as white lands. In that part of the co. Indians and whites live together; their farms are interspersed, and they live as one community.

S. B. Myrick, being duly sworn, testified: I am one of the justices of the peace for Johnson co. As such justice I have had several cases before me of Shawnees suing each other, also of Shawnees suing white men. Have been justice over two years. At election in Oct., 1858, I was clerk of election in Shawnee township. The election was for county seat territorial supt. of common schools representatives in legislature. At that precinct forty-four Shawnees voted. At all the subsequent elections Shawnees voted generally. The adopted Shawnees, they voted in Shawnee township, Monticello, Lexington, and McCamish township.

66 H. W. Cook, being duly sworn, testified: I was county att'y for Johnson co. from June, 1864, to Jan'y, 1865. During that time I was applied by Sally Johnson, a Shawnee Indian, to prosecute Jim Longtail, a Shawnee Indian. I declined to act, because I did not think she had a just cause of action, and she retained Mr. Hill, an att'y, who prosecuted the case before B. P. Notene, a justice of the peace for this county. The charge was grand larceny for stealing her pony.

It is admitted by counsel for pl'ffs that the white men adopted into said tribe, and who have head rights, are pl'ffs in this suit. It is also admitted that roads are laid out through these head right lands and the lands of adjoining white citizens by the State and co. authorities.

The foregoing was all the testimony introduced in the case by both pl'ffs and def'ts.

Whereupon the court, on the above evidence, find the issues joined in this case in favor of the def'ts, and thereupon the court rendered judgment and decree for the said def'ts; and the said pl'ffs by their attorney, Wilson Shannon, moves the court for a new trial,
on the ground that the judgment and decree of the said court
67 is against the law and the evidence in the case, which motion coming on to be heard, and the argument of the counsel having been heard, as well for the pl'ffs as said def'ts, and the court having considered of said motion, do overrule the same and allow the said judgment and decree to stand; to which ruling of the court the said pl'ffs, by their said att'y, excepts, and pray that this said bill of exceptions may be allowed, and that the court may sign said bill of exceptions and order the same to be made a part of the record in this case; all of which is done this 22d day of June, A. D. 1865, in open court.

D. M. VALENTINE,
Judge of the Fourth Judicial Dist.

STATE OF KANSAS, *Johnson County, ss:*

I, S. B. Myrick, clerk of the dist. court in and for said co. and State, do hereby certify that the above and foregoing is a true and correct copy of the record and papers of the above entitled case as the same are now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the town of Olatha, this 10th day of July, A. D. 1865.

[SEAL.] S. B. MYRICK, *Clerk.*

68 Which said petition in error, transcript, and waiver of service is indorsed as follows, to wit: Charles Bluejacket *et al. vs.* Board of Commissioners of Miami county *et al.*, petition in error. Filed July 18, A. D. 1865, Andrew Stark, clerk; Wilson Shannon, attorney for pl'ffs in error.

And afterwards, to wit, on the 22d day of July, A. D. 1865, it being the fifth day of the special term of said supreme court of Kansas, were present Hon. Robert Crozier, chief justice, Hon. L. D. Bailey and Hon. Jacob Safford, associate justices, and Andrew Stark, clerk, when among other proceedings had, the following appears of record on the journals of said court, to wit:

CHARLES BLUEJACKET *et al.*
vs.
THE BOARD OF COMMISSIONERS OF MIAMI county *et al.*

This cause having been called for hearing, it was argued by Wilson Shannon, esq., attorney for the plaintiffs, and by S. O. Thacher, esq., attorney for the defendant in error, and continued for further hearing Monday.

And afterwards, to wit, on Monday, July 24, A. D. 1865,
69 the supreme court of Kansas having met pursuant to adjourn-

ment, and all being present as before, together with other proceedings had, the following appears of record in the journals of said court, to wit:

CHARLES BLUEJACKET *et al.*
vs.
BOARD OF COMMISSIONERS OF JOHNSON COUNTY.

This cause was further argued by Wilson Shannon, esq.. attorney for the plaintiffs in error, and taken under advisement by the court.

And afterwards, to wit, on Tuesday, the 19th day of September, A. D. 1865, the supreme court of Kansas met pursuant to adjournment, when were present Hon. Robert Crozier, chief justice, Hon. L. D. Bailey and Hon. Jacob Safford, associate justices, and Andrew Stark, clerk, and among other proceedings had, the following appears of record, to wit:

CHARLES BLUEJACKET *et al.*
vs.
THE BOARD OF COMMISSIONERS OF JOHNSON county.

This cause came on to be heard upon a transcript from the
70 record of the *of the* district court, sitting in and for Johnson county, and was argued by counsel and considered by the court. Whereupon it is ordered by the court here that the judgment of said district court of Johnson county be, and the same is hereby, affirmed. And it is further considered and adjudged that the said plaintiffs in error, Charles Bluejacket and others, pay the costs of this court, and that execution issue therefor.

And now come the said plaintiffs in error, by their attorney, Wilson Shannon, esq., and except to the judgment and order made herein, and move the court that said exceptions be entered of record, which is ordered to be done.

And afterwards, to wit, on the 20th day of May, A. D. 1866, the following writ of error and a copy thereof were filed in the clerk's office of the supreme court of Kansas, to wit:

71

72 *Writ of error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. the judges of the supreme court of the State of Kansas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between

Charles Bluejacket, who sues as well for himself as all other members of the United tribe of Shawnee Indians, residing in the county of Johnson, State of Kansas, plaintiff, and the board of county commissioners of the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, defendants, wherein was drawn in question the validity of a statute of the State of Kansas, and authority exercised under the same, on the ground of its being repugnant to the treaties and laws of the United States, and
73 the decision was in favor of such, its validity, and the authority exercised under the same. And wherein was also drawn in question the construction of a treaty and statute of the United States, and the decision was against the right, privilege, and exemption specially set up and claimed under such treaty and statute, a manifest error hath happened to the great damage of the said Charles Bluejacket, who sues for himself and others as aforesaid, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be herein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record of proceedings aforesaid being inspected, the
74 said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district of Kansas, this second day of April, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the year.

[SEAL.]

A. S. THOMAS,
Clerk of Circuit Court, Ninth Circuit.

75 Filed May 20th, A. D. 1866.

ANDREW STARK,
Clerk S. C., K's.

76 And afterwards, to wit, on the 31st day of May, A. D. 1866, a bond was filed in the clerk's office of the supreme court of Kansas, which, with its indorsements, is in words and figures following, to wit:

Supreme Court of the United States.

CHARLES BLUEJACKET, who sues as well for himself as all other members of the United tribe of Shawnee Indians, residing in the county of Johnson, State of Kansas, p'ff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, defendants in error.

Know all men by these presents, that we, Charles Bluejacket, Graham Rogers, and George Dougherty, are held and firmly bound unto the above-named board of county commissioners of the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county, in the sum of six hundred dollars, to be paid to the said board of county commissioners of the county of Johnson, in the said State of Kansas, and J. W. Sponable, treasurer of said county, and their successors in office. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally,
77 and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 19th day of May, A. D. 1866.

Whereas the above-named Charles Bluejacket, who sues as well for himself as others, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Kansas:

Now, therefore, the condition of this obligation is such, that if the above-named Charles Bluejacket, who sues as aforesaid, shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

[SEAL.] CHARLES BLUEJACKET.
[SEAL.] GRAHAM ROGERS.
[SEAL.] GEORGE × DOUGHERTY. (his mark.)

Sealed and delivered in the presence of—
ROB'T CROZIER.
JAS. B. ABBOTT.

The above bond and the sureties thereto are sufficient, and are by me approved, this 19th day of May, A. D. 1866.

ROB'T CROZIER,
Chief Justice Sup. Court, State of Kansas.

78 Indorsed: Charles Bluejackets *et al. vs.* The Board of County Commissioners of the County of Johnson *et al.* Bond. Filed May 31st, A. D. 1866. Answer Stark, clerk, S. C., K's.

And afterwards, to wit, on the 5th day of June, A. D. 1866, the following citation was filed in my office, to wit:

79 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the board of county commissioners of the county of Johnson, in the State of Kansas, and J. W. Sponable, treasurer of said county:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Charles Bluejacket, who sues as well for himself as all other members of the United tribe of Shawnee Indians, residing in the county of Johnson, State of Kansas, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert Crozier, chief justice of the supreme court of the State of Kansas, this 19th day of May, in the year of our Lord 1866.

[SEAL.] ROB'T CROZIER,
Chief Justice Sup. Court, State of Kansas.

80 STATE OF KANSAS, *County of Douglas, ss:*

James S. Emery, being duly sworn, says on the first day of June, A. D. 1866, he exhibited to Solon C. Thacher, the attorney of record for defendants in error in the within-entitled cause, and then delivered to him a true copy of the same.

J. S. EMERY.

Subscribed and sworn to before me, this 2d day of June, A. D. 1866.

L. A. STONEBRAKER,
Clerk of the District Court of Douglas County, Kansas.
By A. J. REID, *Deputy.*

81 Filed June 5, A. D. 1866.

ANDREW STARK,
Clerk S. C., K's.

82 STATE OF KANSAS, *Supreme Court, ss:*

I, Andrew Stark, clerk of the supreme court of Kansas, do hereby certify that the foregoing is a full, true, and correct transcript of the record and papers on file in the foregoing-entitled cause, as the same appear of record and on file in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said supreme court of Kansas, at my office, in the city of Topeka, this 11th day of November, A. D. 1866.

[SEAL.] ANDREW STARK,
Clerk Supreme Court of Kansas.

[5-cent int. rev. stamp, cancelled]